

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of September 3, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

#### **Claim Rejections – 35 USC § 103**

Claims 1, 14, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application 2003/0225600 to Slivka, *et al.* (hereinafter Slivka) in view of Non-Patent Literature "Travellers Leave for Portugal After 24-Hour Wait for Plane," by Ingram (hereinafter Ingram), and in further view of Non-Patent Literature "Optimal Overbooking," by Arthur *et al.* (hereinafter Arthur) and Quick Stats, "NFL Tie-Breaker Procedures" (hereinafter Quick Stats).

Applicants respectfully disagree with the rejections and thus have not amended the claims. Applicants have cancelled Claims 2-26. However, Applicants are not conceding that the cancelled claims fail to present patentable subject matter. The cancellations are solely for the purpose of expediting prosecution. Accordingly, the cancellations should not be interpreted as the surrender of any subject matter, and Applicants expressly reserve the right to present the original version of any of the cancelled claims in any future divisional or continuation applications from the present application.

#### **Aspects of Applicants' Invention**

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by amended Claim 1, is a method for boarding passengers when seats on a commercial airline flight flown by a commercial airline are overbooked.

The method can include storing passenger data for each passenger booked on the flight; determining a number of passengers being overbooked and to be denied boarding; and determining denied boarding candidates for the flight. The candidates comprise

passengers without a seat and volunteers offering to give up their seat in exchange for an incentive. See, e.g., Specification, paragraph [0018].

The method also can include, for each determined denied boarding candidate, obtaining the corresponding passenger data including a frequent flyer status, a remaining flight ticket value, a rebooking cost, a passenger lifetime value, and customer relationship management data, and flight operations data including flight schedule and seat availability on the airline and competitor airlines; processing the passenger data and the flight operations data based on a set of rules including at least one among a rule for arranging the determined denied boarding candidates according to a descending revenue impact to the airline, a rule for arranging the determined denied boarding candidates according to passenger frequent flyer status, and a rule for arranging the determined denied boarding candidates according to a lifetime value of each passenger; and selecting passengers from the determined denied boarding candidates for boarding based on a result of the processing. See, e.g., Specification, paragraphs [0014]- [0018].

**The Claims Define Over The Prior Art**

It was asserted in the Office Action that the remaining flight ticket value and a rebooking cost are disclosed through paragraphs 0033-0035; 0037-0038 of Slivka, which teaches computing a PNR value for each passenger that may be based, in part, on an actual fare amount the disrupted passenger previously paid for the disrupted flight. It was also asserted that although Slivka does not explicitly teach a cost of the incentive and a rebooking cost in calculating the PNR value, any difference between the recited cost data in the claims (a cost of the incentive and the cost of rebooking) and the cost data taught by Slivka (fare amount the disrupted passenger previously paid for the flight) is solely found in the non-functional descriptive material of the cost data, which cannot lend patentability to an invention that would have otherwise been anticipated by the prior art.

First, it is noted that the actual fare amount the disrupted passenger previously paid for the disrupted flight is different from a remaining flight ticket value or a

rebooking cost in the sense of the present invention. For example, flights can comprise long legs and short legs, and the remaining flight ticket value can be different depending on whether the remaining leg is long or short. A person skilled in the art would understand that a remaining flight ticket value refers to the ticket value for the remaining flight, not the actual fare amount the disrupted passenger previously paid for the disrupted flight, and the rebooking cost for each passenger includes, for example, payments that may be required to another airline and the cost of meal and hotel reimbursements (see also Specification, paragraph [0006]).

Second, Applicants do not agree that the cost of incentive and the cost of rebooking are non-functional descriptive material because they are not a compilation or mere arrangement of data, but rather they consist of data structure that impart functionality to the computer system for carrying out the method of the present invention. Even assuming that the cost of incentive and the cost of rebooking are non-functional descriptive material, it is noted that non-functional descriptive material should be rejected under 35 U.S.C. 101 only when it does not constitute a statutory process, machine, manufacture, or composition of matter. See MPEP 2106.01. Claim 1 of the instant application clearly recites a statutory process and the presence of the claimed nonfunctional descriptive material is not necessarily determinative of non-statutory subject matter. See MPEP 2106.01. Also, it is noted that USPTO personnel should determine whether the claimed nonfunctional descriptive material be given patentable weight and must consider all claim limitations when determining patentability of an invention over the prior art. See MPEP 2106.01. Further, it is noted the Examiner has not proved that the present invention as claimed would have otherwise been anticipated by the prior art.

It was further asserted in the Office Action that the passenger lifetime value is disclosed through paragraph 0006 and paragraphs 0033-0035 of Slivka, and the customer

relationship management data is suggested through determination of passenger flow to influence revenue management as shown in [0004].

Paragraph [0006] of Slivka reads:

*[0006] Methods, systems, and articles of manufacture consistent with certain principles related to the present invention may determine the impact of schedule changes and operational disruptions on passenger flow and how affected passengers may be re-accommodated with respect to their value established by airlines, ancillary services, and/or commodities, such as hotel and car reservations.*

It is not clear how the "value established by airlines, ancillary services, and/or commodities, such as hotel and car reservation" has anything to do with the passenger lifetime value to a particular airline in the sense of the present invention. It is clear from the above paragraph that the re-accommodation of the passengers should take into consideration of the total value of each passenger impacted by the disruption of a particular flight (including impact on flight tickets and other related services such as hotel and rental car reservations), which is not the same as the lifetime value of a passenger to a particular airline which is not necessarily related to the particular interrupted flight.

With regard to the customer relationship management data, it is not clear how the determination of passenger flow to influence revenue management has anything to do with the customer relationship management data in the sense of the present invention. It is noted that Customer relationship management (CRM) is a specific term applied to processes implemented by a company to handle its contact with its customers. CRM software is used to support these processes, storing information on current and prospective customers. Information in the system can be accessed and entered by employees in different departments, such as sales, marketing, customer service, training, professional development, performance management, human resource development, and compensation. Details on any customer contacts can also be stored in the system. The

rationale behind this approach is to improve services provided directly to customers and to use the information in the system for targeted marketing and sales purposes. See wikipedia at [http://en.wikipedia.org/wiki/Customer\\_relationship\\_management](http://en.wikipedia.org/wiki/Customer_relationship_management).

The other cited references do not make up for the deficiencies of Slivka as discussed above.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claim 1. Applicants therefore respectfully submit that Claim 1 defines over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

### **CONCLUSION**

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

AKERMAN SENTERFITT

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/Gregory A. Nelson/

Gregory A. Nelson, Registration No. 30,577

Yonghong Chen, Registration No. 56,150

Customer No. 40987

Post Office Box 3188

West Palm Beach, FL 33402-3188

Telephone: (561) 653-5000